

## **DECLARATION OF EMERGENCY**

### **Department of Environmental Quality Office of Water Resources**

#### **Extension of Time to Achieve Compliance with Prohibition Against Produced Water Discharges in Freshwater Areas and in Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas (LAC 33:IX.708.C) WP023E**

In accordance with the emergency provisions of La. R. S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality (Department) to use emergency procedures to establish rules, and of La. R. S. 30:2011 and La. R. S. 30:2074, which allow the Department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the Secretary of the Department hereby finds that imminent peril to the public welfare exists. Accordingly, the Department adopts the following emergency rule effective December 30, 1996, for one hundred twenty (120) days, or until promulgation of the final rule, whichever occurs first.

Under current Louisiana regulations, most discharges of produced water from oil and gas production facilities must cease before January 1, 1997. For certain of these facilities, compliance with the prohibition on produced water discharges would require stopping production or the disposal of all produced waters. Either alternative could affect the public welfare through loss of employment, loss of taxes, and loss of royalty revenues.

The cost of disposal of produced water at permitted disposal facilities, along with the attendant costs of storage and transportation, could greatly reduce the net income generated by these production facilities. In many cases, the costs may be so great in relation to the revenue generated by the oil and/or gas production as to render continued operation impractical.

As a further basis for promulgation of this emergency rule, the Department finds the following:

#### **State regulation of produced water**

- ◆ Many LWDPS permits have prohibited discharges of produced water beginning in 1988.
- ◆ In March of 1991, state regulations were promulgated concerning produced water.

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- ◆ Certain facilities have been granted authority to discharge produced water for limited periods of time while working to eliminate all produced water discharges.

**Federal regulation of produced water**

**Federal general permit**

- ◆ NPDES general permit LAG290000 (published in the *Federal Register* on January 9, 1995, and effective February 8, 1995) prohibits produced water discharges to coastal waters with some exceptions.

**Federal administrative order**

- ◆ In conjunction with NPDES general permit LAG290000, the EPA issued an administrative order (also effective February 8, 1995) extending the time for compliance with the prohibition until January 1, 1997.

**Federal guidelines and standards**

- ◆ The most recently promulgated federal guidelines and standards that address produced water discharges were published December 16, 1996, at 61 Fed. Reg. 66085 (1996) (the federal guidelines).
- ◆ The federal guidelines note at page 66122-23 the following:

*EPA received numerous comments from operators in the Gulf of Mexico coastal region claiming that they would need additional time to comply with the rule's zero discharge requirement for produced water. EPA recognizes that it may take some time for operators to determine the best and most cost effective mechanism of compliance and to implement that mechanism. EPA also recognizes that the NPDES permit issuing authority has discretion to use administrative orders to provide the requisite additional time to meet zero discharge.*

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- ◆ The Department's Office of Water Resources became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996.
- ◆ The federal guidelines also note at page 66087 the following:

*The United States Department of Energy (DOE) has provided the State of Louisiana with comments and analyses suggesting a change to the Louisiana state law requiring zero discharge of produced waters to open bays by January 1997. Promulgation of [these 12/16/96 federal guidelines] would generally preclude issuance of permits allowing discharges.*

**Department of Energy study**

- ◆ The Department accepted information that was part of the DOE study referenced in LAC 33:IX.708.C.2.b.iv.(e), as documented at 61 Fed. Reg. 66087.
- ◆ Even though the DOE study itself has not yet been completed, the Department and the EPA agree that study results would not change the produced water zero discharge requirement because the study's data and argument address water quality based limits and the federal guidelines are technology based.

**Mitigating factors**

Various facilities have been unable to comply with the requirement to cease all discharges of produced water by January 1, 1997, because:

1. A number of facilities have applied to the Louisiana Department of Natural Resources (DNR) for permits to construct injection wells to receive the produced water that would otherwise be discharged. Due to a personnel shortage at DNR, all of the permit applications currently pending will not be processed prior to January of 1997.
2. Facilities that discharge under the authority of LAC 33:IX.708.2.a.iv possess a valid LWDPS permit which allows continued discharge of

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produced water. With the publication of the federal guidelines on December 16, 1996, and upon the effective date of those guidelines (January 14, 1997), these dischargers will still possess a valid state permit which conflicts with promulgated federal guidelines requiring zero discharge.

3. Certain facilities that previously had authority to discharge produced water relied upon the DOE study to support an individual or general permit or a rule change to allow the discharge of produced water. These facilities are now, with promulgation of the 1996 federal guidelines, required to attain zero discharge.

**Conclusion**

The loss of employment, taxes, and royalties that would otherwise result, to the detriment of the public welfare, can be avoided by allowing, on a case-by-case basis, a limited amount of additional time for certain operators to either arrange an alternate method for disposal of their produced water or to cease production. This extension of time shall not extend the produced water discharge beyond January 1, 1999, except that an additional one-year extension may be granted to those facilities that discharge produced water generated in outer continental shelf waters into a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet below Morgan City. In no instance shall the Department approve a produced water discharge which would extend beyond January 1, 2000.

Adopted this 30th day of December, 1996.

/s/ J. Dale Givens  
J. Dale Givens  
Secretary

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part IX. Water Quality Regulations**

**Chapter 7. Effluent Standards**

**§708. Exploration for and Production of Oil and Natural Gas**

\* \* \*

**[See Prior Text in A-C.2.a.iii]**

iv. There shall be no discharge of produced water to freshwater swamp or freshwater marsh areas or to natural or manmade water bodies bounded by freshwater swamp or freshwater marsh vegetation unless the discharge complies with all applicable portions of Subsection C.2.e of this Section and:

(a) the discharge has been specifically authorized in accordance with an approved schedule for discharge termination; or

(b) the discharge has been authorized by a valid LWDPs permit reflecting a discharge directed to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet, below Morgan City.

\* \* \*

**[See Prior Text in C.2.a.v]**

b. Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas

i. All produced water discharges must be specifically identified in a valid individual or general LWDPs permit or order and must comply with all applicable portions of Subsection C.2.f of this Section.

\* \* \*

**[See Prior Text in C.2.b.ii-d]**

e. Authority to Discharge Produced Water Into Freshwater Areas After January 1, 1997

i. In accordance with LPDES general permit LAG290000 and in light of the "Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category," published December 16, 1996, and effective January 14, 1997 (the federal guidelines), facilities that discharge produced water as authorized in a valid permit under Subsection C.2.a.iv of this Section as of July 1, 1996, shall cease the discharge of produced water by July 1, 1997, unless the continued discharge is specifically authorized in these regulations or in a valid permit or order.

ii. Each facility desiring to continue to discharge produced water after July 1, 1997, shall submit to the department, no later than May 1, 1997, one of the following:

(a). certification that the facility shall cease the discharge of produced water by July 1, 1997; or

(b). a schedule to accomplish termination of the produced water discharge as expeditiously as possible.

iii. The discharge termination schedule shall contain, at a minimum, a certification by the facility operator of all of the following:

(a). that surface discharge of produced water is the only immediately available alternative;

(b). that the produced water discharge termination schedule is limited in term to the period necessary to provide an alternate waste-handling method;

(c). the discharge of produced water has not been terminated;

(d). the discharge does not represent gross potential for unacceptable environmental degradation; and

(e). the discharge was previously permitted.

iv. Authority to continue discharges of produced water pursuant to an approved schedule shall not extend beyond the date upon which the produced water discharge can reasonably be eliminated. In no event shall a discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet below Morgan City, continue:

(a). for produced water generated in coastal waters, beyond January 1, 1999; and

(b). for produced water generated in outer continental shelf waters, beyond January 1, 2000; and

(c). for facilities that discharge produced water generated in both coastal and outer continental shelf waters, beyond January 1, 2000.

v. There shall be no discharge of produced water to a major deltaic pass of the Mississippi River or to the Atchafalaya River, including Wax Lake Outlet below Morgan City, after January 1, 2000.

f. Authority to Discharge Produced Water Into Intermediate, Brackish, and Saline Water Areas Inland of the Territorial Seas After January 1, 1997

i. Notwithstanding the absolute deadline of Subsection C.2.b.v.(b) of this Section and in light of the federal guidelines, facilities previously authorized by valid LWDPs permits as of July 1, 1996, to discharge produced water under Subsection C.2.b.iv of this Section, pursuant to an approved compliance schedule shall:

(a). cease the discharge of produced water by February 14, 1997; or

(b). submit an application for continued authority to discharge produced water, including a schedule to accomplish termination of the produced water discharge as expeditiously as possible. This application and schedule shall be received by the department on or before February 14, 1997. Submission of an application or schedule is not a defense to an enforcement action for a facility's failure to adhere to the terms and conditions of its permit or prior compliance schedule. No such schedule shall be approved unless the facility, at a minimum, meets the requirements of Subsection C. 2.e.iii of this Section. Only the minimum time demonstrably necessary to eliminate the discharge of produced water may be granted, but in no case shall authority to discharge produced water extend beyond January 1, 1999.

ii. In order to allow sufficient time to process all extension applications, all persons or facilities that timely submit an application/schedule in accordance with Subsection C.2.f of this Section are hereby granted an extension of authority to discharge produced water through July 1, 1997, unless the department provides otherwise in writing. All terms, conditions, limitations, and requirements of the most recent permit or compliance schedule or order authorizing the produced water discharge shall continue in full force and effect unless the department provides otherwise

in writing. Authority to discharge beyond July 1, 1997, shall only be granted within the department's discretion and through a valid permit or order.

iii. There shall be no discharge of produced water to natural or man-made water bodies located in intermediate, brackish, or saline marsh areas after January 1, 1999.

**[See Prior Text in C.3-5.f]**

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:261 (April 1989), amended LR 17:263 (March 1991), LR